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FRANK MOORE, MICHELLE MELEN

UNITED STATES BANKRUPTCY COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

XIAOYONG LAI,
Debtor.

No. 23-51382

Judge Stephen L. Johnson

WEN FANG WANG, FRANK MOORE,
MICHELLE MELEN,

Chapter 11

Adv. Proceeding Case No. 23-05101

Plaintiffs,

vs.

**MOTION FOR RELIEF FROM THE
AUTOMATIC STAY; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

XIAOYONG LAI,
Defendant.

Hearing date: January 9, 2024

Time: 10:00 a.m.

Place.: Courtroom 9

XIAOYONG LAI AND UNITED STATES
TRUSTEE,

Hon. Stephen L. Johnson

Respondents.

TO DEBTOR XIAOYONG LAI and UNITED STATES TRUSTEE: PLEASE TAKE
NOTICE that creditors WEN FANG WANG (“WANG”), FRANK MOORE (“MOORE”) and
MICHELLE MELEN (“MELEN”) (collectively, “CREDITORS”) file this motion requesting relief
from the automatic stay, the details of which are as follows:

In re XIAOYONG LAI

WANG, et al., v. XIAOYONG LAI

CREDITORS’ MOTION FOR RELIEF FROM THE AUTOMATIC STAY; MEMO OF PS & AS IN SUPPORT

Chapter 11 Case No. 23-51382

Adv. Proceeding Case No. 23-05101

- 1 • Debtor XIAOYONG LAI (“LAI”) filed the instant Chapter 11 action (Case No.
2 23-51382) on November 29, 2023 along with a Notice of Stay filed in the Santa Clara
3 Superior Court in the case titled LAI v. WANG, et al., Santa Clara County Superior
4 Court Case No. 17CV308093.
- 5 • CREDITORS filed an Adversary Proceeding Complaint (Case No. 23-05101) on
6 December 6, 2023 [Dkt. 1].
- 7 • As stated in the Adversary Proceeding Complaint (Case No. 23-05101),
8 CREDITORS were awarded attorneys’ fees and costs pursuant to Code of Civil
9 Procedure section 425.16, subdivision (c), California’s anti-SLAPP statute in a
10 tentative ruling issued on November 20, 2023 and adopted on November 21, 2023
11 after completion of a hearing entertaining LAI’s oral argument [Dkt. 1, p. 1]
12 (November 21, 2023 Tentative Ruling – Exhibit K to Adversary Proceeding
13 Complaint) [Dkt. 1-11]. A true and correct copy of the November 21, 2023 Tentative
14 Ruling is attached as Exhibit A to the Declaration of Frank S. Moore (“Moore Decl.”)
15 filed herewith.
- 16 • The Santa Clara Superior Court issued a minute order on November 21, 2022, stating
17 in relevant part: “The motion of defendants for \$169,200.00 in attorneys fees and
18 \$4,703.12 in costs is GRANTED in its entirety.” A true and correct copy of the Santa
19 Clara Superior Court’s November 21, 2023 Minute Order is attached hereto as
20 Exhibit B Moore Decl.
- 21 • Also as stated in the Adversary Proceeding Complaint (Case No. 23-05101), creditors
22 prepared a proposed Order which was pending the Honorable Socrates P.
23 Manoukian’s signature on November 27, 2023 [Dkt. 1, pp. 1-2] (November 27, 2023
24 Proposed Order – Exhibit L to Adversary Proceeding Complaint) [Dkt. 1-12].
- 25 • On December 7, 2023, CREDITORS filed their Proof of Claim in the Chapter 11
26 (Case No. 23-51382) in the amount of \$173,903.12, the amount of the attorneys’ fees
27 and costs, said Proof of Claim supported by the November 21, 2023 Tentative Ruling
28

referenced above [Dkt 1 Claims Register].

- On December 8, 2023, the Santa Clara Superior Court in the case titled *LAI v. WANG, et al.*, Santa Clara County Superior Court Case No. 17CV308093 served upon CREDITORS and LAI (and his counsel) a signed order granting the attorneys' fees and costs of \$173,903.12 that was pending the signature of Judge Manoukian ("December 8, 2023 Order"). A true and correct copy of this December 8, 2023 Order is attached hereto as Exhibit C to Moore Decl.
- The Santa Clara Superior Court's November 21, 2023 Minute Order (Exhibit B) also states, as follows: "The matter will be set for Dismissal Review on 28 February 2024 at 10:00 AM in this Department 20."

WHEREFORE, it appearing that the act of the Superior Court in signing and entering the Order of December 8, 2023, granting the attorneys' fees and costs of \$173,903.12 could be construed as violating the automatic stay.

ACCORDINGLY, CREDITORS hereby seek relief in the form of a motion for the following relief:

- For this bankruptcy court to determine that the December 8, 2023 Order (Exhibit C) meets the "ministerial act exception" to the general rule that a non-bankruptcy court civil order is void when entered against a debtor after he or she files for bankruptcy and that the postpetition entry of that order did not violate the automatic stay;
- To afford CREDITORS permission to file and serve a Notice of Entry of Order of the December 8, 2023 Order (Exhibit C) pursuant to Code of Civil Procedure section 664.5;
- To afford CREDITORS permission to send to Judge Manoukian a Proposed Judgment to be entered in *LAI v. WANG, et al.*, Santa Clara County Superior Court Case No. 17CV308093 (a true and correct copy of which is attached hereto as Exhibit D to Moore Decl.) for Judge Manoukian to either adopt, modify or substitute as he

1 sees fit as a further ministerial act exception as well as a Notice of Entry of Judgment;
2 or, alternatively,

- 3 4. To afford CREDITORS a temporary lift of the automatic stay to effectuate
4 paragraphs 2 and 3, above.

5
6 There are no further legal issues concerning the merits of whether LAI's lawsuit against
7 CREDITORS was a SLAPP suit that are pending in *LAI v. WANG, et al.*, Santa Clara County
8 Superior Court Case No. 17CV308093, the case has been pending for over six (6) years since April
9 3, 2017 and there is good cause to allow a judgment to be entered in the Santa Clara County
10 Superior Court for the reasons set forth below. In the event this Court determines the better course
11 is to temporarily lift the automatic stay for further proceedings, CREDITORS submit that they have
12 met the requirements to demonstrate the existence of equitable cause for such a lift.

13
14 Dated: December 11, 2023

Law Offices of Frank S. Moore

15
16 /s/Frank S. Moore

17 Frank S. Moore
18 Attorney for Creditors
19 WANG, MOORE and MELEN
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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WANG, et al., v. XIAOYONG LAI

CREDITORS' MOTION FOR RELIEF FROM THE AUTOMATIC STAY; MEMO OF PS & AS IN SUPPORT

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1
2 **MEMORANDUM**

3 **A. The Law Governing Automatic Stays and the “Ministerial Act Exception”**

4 A bankruptcy filing imposes an automatic stay of all litigation against the debtor. The
5 bankruptcy automatic stay is created by operation of law and governed by 11 U.S.C. § 362(a).
6 CREDITORS assume, without conceding, that the automatic stay applies to this Chapter 11
7 proceeding.

8 Having occurred after the automatic stay went into effect in this Chapter 11 proceeding (Case
9 No. 23-51382), it is beyond cavil that the Santa Clara County Superior Court clerk’s entry of the
10 December 8, 2023 Order (Exhibit C to Moore Decl.) occurred after the November 29, 2023
11 automatic stay. Because CREDITORS’ desire to protect their statutory rights should they prevail in
12 the Adversary Proceeding Complaint (Case No. 23-05101), CREDITORS bring this motion for
13 relief from the automatic stay pursuant to and 11 U.S.C. §§ 362(d) and 105(a).

14 **1. The Ninth Circuit Has Recognized and Adopted the “Ministerial Act Exception”
15 to 11 U.S.C. § 362(a)**

16 The Ninth Circuit, along with other courts of appeals, has adopted a “ministerial act
17 exception” to the general rule that a non-bankruptcy court civil order is void when entered against a
18 debtor after he or she files for bankruptcy. In *McCarthy, Johnson & Miller v. N. Bay Plumbing, Inc.*
19 (*In re Pettit*), 217 F.3d 1072, 1080 (9th Cir.2000), the court considered the effect of a federal district
20 court order releasing funds from a court registry account over the objection of a debtor who claimed
21 that the registry funds were property of its bankruptcy estate. Although the district court signed the
22 order releasing the funds before the debtor filed the bankruptcy petition, the clerk of court did not
23 issue the check until after the filing. Relying on the Second Circuit’s decision in *Rexnord Holdings,*
24 *Inc. v. Bidermann*, 21 F.3d 522, 527 (2d Cir.1994), the Ninth Circuit ruled that the:

25 exception [from the automatic stay] for ministerial acts stems from the common sense
26 principle that a judicial “proceeding” within the meaning of section 362(a) of the
27 Bankruptcy Code ends once a decision on the merits has been rendered. Ministerial
28 acts or automatic occurrences that entail no deliberation, discretion, or judicial
involvement do not constitute continuations of such a proceeding. We now adopt the
ministerial act exception for this circuit[.]

1 *In re Pettit*, 217 F.3d at 1079; see also *Roberts v. Comm’r*, 175 F.3d 889, 897 (11th Cir.1999);
2 *Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969, 974 (1st Cir.1997); *Savers Fed. Sav.*
3 *& Loan Ass’n v. McCarthy Constr. Co. (In re Knightsbridge Dev. Co.)*, 884 F.2d 145, 148 (4th
Cir.1989).

4 In *Pettit*, the court cited with approval to a First Circuit case that extended the ministerial act
5 exception to acts of public officials. *In re Soares*, 107 F.3d at 973–74 (“Thus, when an official’s
6 duty is delineated by, say, a law or a judicial decree with such crystalline clarity that nothing is left
7 to the exercise of the official’s discretion or judgment, the resultant act is ministerial.”). Certainly,
8 Judge Manoukian and the clerk of the Superior Court for the County of Santa Clara County are
9 public officials.

10 **2. The December 8, 2023 Order by the Santa Clara Superior Court Meets the**
11 **“Ministerial Act Exception” to 11 U.S.C. § 362(a)**

12 Here, the issue of the CREDITORS’ entitlement to an award of attorneys’ fees and costs as
13 prevailing parties under California’s anti-SLAPP statute (Cal. Code Civ. Proc., § 425.16(c)) had
14 already been adjudicated on the merits as evidenced by the Santa Clara Superior Court’s November
15 21, 2023 Tentative Ruling issued by Judge Manoukian (Exhibit A to Moore Decl.) Santa Clara
16 Superior Court offers a tentative ruling and requires a notice of intent to appear at an oral hearing as
17 allowed for under Rule 3.1308(a)(1) of the California Rules of Court. Santa Clara Superior Court
Local Civil Rule 8(E)¹; Exhibit A, p. 1.

18 Under this procedure, a court issuing a tentative ruling may require (i.e., “direct”) oral
19 argument or “[i]f the court has not directed argument, oral argument shall be permitted only if a
20 party notifies all other parties and the court by 4:00 p.m. on the court day prior to the hearing of the
21 partys intention to appear.” Cal. Rules of Ct., Rule 3.1308(a)(1). This procedure is what Santa Clara
22 Superior Court uses. (See footnote 1.) It contemplates that a party be given the opportunity to
23 request oral argument because a tentative ruling becomes final only if the court has “not directed
24 oral argument and notice of intent to appear has not been given.” Cal. Rules of Ct., Rule

25
26 ¹ “The Court follows CRC 3.1308(a)(1) for those departments that have elected to issue
27 tentative rulings in civil law and motion and discovery matters.” Rule 8(E).

1 3.1308(a)(1).

2 Here, Santa Clara Superior Court's November 21, 2023 Minute Order documents that LAI
3 did not, in fact, give the Superior Court the proper notice of intent to appear. (Exhibit B, p.1, to
4 Moore Decl. – "No one called to contest the Tentative Ruling.") However, because LAI notified
5 MOORE that he was going to appear, the oral argument commenced on November 21, 2023 and
6 Judge Manoukian nevertheless adopted the tentative ruling he issued. (Moore Decl.) MOORE
7 prepared the Proposed Order pursuant to the directive of Judge Manoukian and as mandated by Rule
8 3.1312 of the California Rules of Court² and Santa Clara County Superior Court Rule 16³. (See
9 Exhibit A – "All proposed orders and papers should be submitted to this Department's e-filing
10 queue.")

11 As California's Supreme Court has noted, a tentative ruling becomes the final ruling of the
12 trial court after the hearing on the motion is conducted, assuming the court does not then render a
13 different ruling. *Brown, Winfield & Canzoneri, Inc. v. Superior Court*, 47 Cal.4th 1233, 1245

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16 (a) Prevailing party to prepare

17 Unless the parties waive notice or the court orders otherwise, the party prevailing on any
18 motion must, within five days of the ruling, serve by any means authorized by law and
19 reasonably calculated to ensure delivery to the other party or parties no later than the
20 close of the next business day a proposed order for approval as conforming to the court's
21 order. Within five days after service, the other party or parties must notify the prevailing
party as to whether or not the proposed order is so approved. The opposing party or
parties must state any reasons for disapproval. Failure to notify the prevailing party
within the time required shall be deemed an approval. The extensions of time based on
a method of service provided under any statute or rule do not apply to this rule.

22 (b) Submission of proposed order to court

23 The prevailing party must, upon expiration of the five-day period provided for approval,
24 promptly transmit the proposed order to the court together with a summary of any
responses of the other parties or a statement that no responses were received.

25 Cal. Rules of Ct., Rule 3.1312(a)-(b).

26 ³ "If instructed to prepare an order after a hearing, proposed orders after hearing shall be
27 lodged with the court electronically in PDF format attached to Judicial Council Form EFS-020." Santa
Clara County Superior Court Rule 16.

28

In re XIAOYONG LAI

WANG, et al., v. XIAOYONG LAI

CREDITORS' MOTION FOR RELIEF FROM THE AUTOMATIC STAY; MEMO OF PS & AS IN SUPPORT

Chapter 11 Case No. 23-51382

Adv. Proceeding Case No. 23-05101

(2010). Because Judge Manoukian did not change his tentative ruling, the November 21, 2023 Minute Order (Exhibit B) is the operative order finalizing the tentative ruling as contemplated by *Brown, supra.*⁴ Between the issuance of the Tentative Ruling by Judge Manoukian (Exhibit A) and the signing of the December 8, 2023 Order (Exhibit C) entailed no deliberation, discretion, or judicial involvement and, therefore does not constitute continuations of such a proceeding. Nevertheless, it is inescapable that the signing of the December 8, 2023 Order (Exhibit C) occurred after the automatic stay in this Chapter 11 proceeding (Case No. 23-51382) went into effect.

CREDITORS respectfully submit that the December 8, 2023 Order by the Santa Clara Superior Court (Exhibit C) meets the ministerial act exception under Ninth Circuit authority cited herein. CREDITORS' request to file and serve a Notice of Entry of Order is likewise ministerial since it involves nothing other than the court clerk filing said notice.

3. The Proposed Judgment CREDITORS Seek to Present for Signing and Filing in the Santa Clara Superior Court the Proposed Judgment Which Likewise Meets the "Ministerial Act Exception"

While CREDITORS have refrained from sending the Proposed Judgment (Exhibit D to Moore Decl.) since the automatic stay went into effect, this Proposed Judgment (Exhibit D) was sent to Debtor LAI on November 22, 2023 for review pursuant to and would have been submitted to the Santa Clara Superior Court on December 8, 2023, upon receipt of the December 8, 2023 Order (Exhibit C) since MOORE was simply waiting for the date for the Proposed Order granting the fees and costs to be signed and filed. (Moore Decl.)

"The purpose of the [SLAPP Act] is 'to provide a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional rights.' [Citations.]" *No Doubt v. Activision Publishing, Inc.*, 192 Cal.App.4th 1018, 1026 (2011). "Because these meritless lawsuits

⁴ Comparing the Tentative Ruling issued by Judge Manoukian (Exhibit A) with the Santa Clara Superior Court's November 21, 2023 Minute Order (Exhibit B) and the December 8, 2023 Order by the Santa Clara Superior Court (Exhibit C) reflects that the substantive ruling by the Santa Clara Superior Court is identical in each document. The only difference between the Santa Clara Superior Court's November 21, 2023 Minute Order (Exhibit B) and the December 8, 2023 Order by the Santa Clara Superior Court (Exhibit C) is that the latter (Exhibit C) reflects, accurately, the historical facts at the beginning indicating that Debtor LAI appeared at the hearing to contest the tentative ruling, made his oral argument and that the Superior Court adopted its tentative ruling. (Exhibit C, p. 1.)

1 seek to deplete ‘the defendant’s energy’ and drain ‘his or her resources’ [citation], the Legislature
2 sought ‘to prevent SLAPPs by ending them early and without great cost to the SLAPP target’
3 [citation].” *Varian Medical Systems, Inc. v. Delfino*, 35 Cal.4th 180, 192 (2005). Accordingly,
4 “granting a motion to strike under [Code of Civil Procedure] section 425.16 results in the dismissal
5 of a cause of action *on the merits* [citation]....” *Id.* at p. 193 (emphasis added).

6 Here, LAI also appealed the order granting the special motion to strike rendering it final for
7 all purposes. See *Franklin & Franklin v. 7-Eleven Owners for Fair Franchising*, 85 Cal.App.4th
8 1168, 1174 (2000) (“finality” achieved after “an appeal from the trial court judgment has been
9 exhausted or the time to appeal has expired”); see also *Lockwood v. Sheppard, Mullin, Richter &*
10 *Hampton*, 173 Cal.App.4th 675, 682 (2009) (dismissal after grant of anti-SLAPP motions was “on
11 the merits”); *Sunset Millennium Associates, LLC v. Le Songe, LLC*, 138 Cal.App.4th 256, 258 (2006)
12 (“The granting of the Code of Civil Procedure section 425.16 special motion to strike terminated the
13 entire lawsuit as to defendant. Defense counsel submitted a proposed judgment....”) See Cal. Code
14 Civ. Proc., § 582 (“In all other cases judgment shall be rendered on the merits.”)

15 Moreover, the fees and costs awarded to CREDITORS are considered to be the equivalent to
16 a money judgment. See *Dowling v. Zimmerman*, 85 Cal.App.4th 1400, 1432–1433 (2001) [a
17 statutory award of attorney fees and costs under subdivision (c) of section 425.16, the anti-SLAPP
18 statute, is not automatically stayed by the perfecting of an appeal because such an award is not
19 reciprocal, and therefore not routine costs of suit within the meaning of section 917.1, subdivision
20 (d)]; *Chapala Management Corp. v. Stanton*, 186 Cal.App.4th 1532, 1542 (2010) (referring to the
21 *Dowling* exception as the “money judgment exception”).

22 A judgment is defined by California Code of Civil Procedure section 577 as “the final
23 determination of the rights of the parties in an action or proceeding.” No particular form is
24 prescribed for a judgment rendered through a motion to strike a complaint under California’s anti-
25 SLAPP statute. “ ‘The form of the judgment is of no consequence so long as it may be ascertained
26 therefrom what rights, if any, of the respective parties in the action have been determined by the
27 court. The test of its sufficiency must rest in its substance rather than its form. [Citations.]’

1 [Citations.]" *Pista v. Resetar*, 205 Cal. 197, 200 (1928).

2 Thus, such judgments are governed by California Code of Procedure section 577, *et seq.*
3 *Kahn v. Kahn*, 68 Cal.App.3d 372, 382 (1977). ("Section 577 *et seq.* of the Code of Civil Procedure
4 deal with the effect to be given judgments in California.") "In any judgment, or execution upon such
5 judgment, the amount shall be computed and stated in dollars and cents, rejecting fractions." Cal.
6 Code Civ. Proc., § 577.5. "Judgment may be given for or against one or more of several plaintiffs,
7 and for or against one or more of several defendants; and it may, when the justice of the case
8 requires it, determine the ultimate rights of the parties on each side, as between themselves." Cal.
9 Code Civ. Proc., § 578. California Code of Civil Procedure section 668 mandates that the clerk of
10 the superior court keep, with the records of the court, a book called the "judgment book," in which
11 judgments must be entered.

12 The content of the Proposed Judgment (Exhibit D to Moore Decl.) simply recounts the
13 byzantine history of the proceedings in *LAI v. WANG, et al.*, Santa Clara County Superior Court
14 Case No. 17CV308093, including initial order by Judge Kirwin on May 9, 2019, the appeal, the
15 opinion and the remittitur issued, the two separate unopposed timely filed memorandum of costs and
16 the award of fees and costs that resulted in the Tentative Ruling issued by Judge Manoukian (Exhibit
17 A) and the signing of the December 8, 2023 Order (Exhibit C). There is nothing in the Proposed
18 Judgment to deliberate or to apply discretion or judicial involvement other than to check the
19 accuracy of the dates and the events recounted therein, a purely ministerial function. See *Rexnord*,
20 *supra*, 21 F.3d at 527 (finding an act of entry of judgment by court clerk was ministerial act that did
21 not violate the stay). Moreover, any modification or substitution of a judgment Judge Manoukian
22 might use in place and instead of Proposed Judgment (Exhibit D) would remain ministerial given
23 that all the ultimate rights of the parties on each side, as between themselves, have been determined
24 on the merits already by the Santa Clara Superior Court⁵ and the Sixth Appellate District Court of
25

26 ⁵ On May 9, 2019, Judge Peter H. Kirwin of the Santa Clara County Superior Court
27 granted the special motion to strike the complaint pursuant to Code of Civil Procedure section 425.16
(continued...)

1 Appeals.⁶ Cal. Code Civ. Proc., §§ 578, 582. Where entry of a judgment (or other task) is a
2 ministerial act, it does not constitute the “continuation of a judicial proceeding against the debtor”,
3 as that phrase is employed by section 362(a)(1), and is not stayed by the filing of a bankruptcy
4 petition. *In re Capgro Leasing Associates*, 169 B.R. 305, 315-316 (E.D. N.Y. 1994).

5 **B. Alternatively, a Number of Equitable Factors Recognized by Bankruptcy Courts**
6 **Warrant a Temporary Lifting of the Automatic Stay to Enter Final Judgment in *LAI v.***
7 ***WANG, et al.*, Santa Clara County Superior Court Case No. 17CV308093**

8 **1. Only the Bankruptcy Court Has Authority to Grant Relief From the Automatic Stay**

9 Only the court presiding over the bankruptcy proceeding has the authority to grant any relief
10 from the automatic stay. This follows both from the language of § 362(d) (providing for “the court”
11 to grant relief, in a context plainly referring to the bankruptcy court) and from the purpose of the
12 automatic stay, protecting the jurisdiction of the bankruptcy court. See *In re Benalcazar*, 283 B.R.
13 514, 521-522 (Bankr.N.D. Ill. 2002); *Sunshine Development, Inc. v. FDIC*, 33 F.3d 106, 114 (1st
14 Cir.1994) (“While the stay ensures that most matters related to the debtor’s estate will come under
15 the wing of a single bankruptcy court in the first instance, further provisions of the same statute
16 permit the bankruptcy court to relax the automatic stay under enumerated conditions.”) (footnote
17 omitted). The decisions are uniform in finding exclusive bankruptcy jurisdiction to grant relief from
18 the stay. See, e.g., *Cathey v. Johns–Manville Sales Corp.*, 711 F.2d 60, 62–63 (6th Cir.1983);
19 *Constitution Bank v. Tubbs*, 68 F.3d 685, 691 (3d Cir.1995) (“Relief from the stay can be granted
20 only by the bankruptcy court having jurisdiction over a debtor’s case.”).

21 _____
22 ⁵(...continued)

23 motion of defendants MOORE and MELEN in its entirety and of defendant WANG on the cause of
24 action for malicious prosecution, abuse of process and conspiracy but not on the contract and fraud
25 causes of action. A true and correct copy of Santa Clara County’s Judge Kirwin’s May 9, 2019 Order
26 is attached as Exhibit E to Moore Decl.

27 ⁶ On May 10, 2023, the Sixth District Court of Appeal affirmed Judge Kirwin’s initial
28 granting of the special motion to strike and reversed Judge Kirwin's May 9, 2019 Order denying
29 WANG’s special motion to strike as to the fraud, breach of contract, and common counts causes of
30 action and directed a new order granting WANG's anti-SLAPP motion. A true and correct copy of the
May 10, 2023 Sixth District Court of Appeal Opinion in Case No. H047118 is attached as Exhibit F to
Moore Decl.

In re XIAOYONG LAI

WANG, et al., v. *XIAOYONG LAI*

CREDITORS’ MOTION FOR RELIEF FROM THE AUTOMATIC STAY; MEMO OF PS & AS IN SUPPORT

Chapter 11 Case No. 23-51382

Adv. Proceeding Case No. 23-05101

1 **2. Good Cause Exists to Lift the Automatic Stay to Allow Entry of Judgment**

2 To obtain relief from the automatic stay, the party seeking relief must first establish a *prima*
3 *facie* case that “cause” exists for relief under § 362(d)(1). *Mazzeo v. Lenhart (In re Mazzeo)*, 167
4 F.3d 139, 142 (2nd Cir.1999); *Duvar Apt., Inc. v. Fed. Deposit Ins. Corp. (In re Duvar Apt., Inc.)*,
5 205 B.R. 196, 200 (9th Cir. BAP 1996). Once a *prima facie* case has been established, the burden
6 shifts to the debtor to show that relief from the stay is not warranted. § 362(g)(2). *Id.* A *prima facie*
7 case requires the movant to establish “a factual and legal right to the relief that it seeks.” *In re*
8 *Elmira Litho, Inc.*, 174 B.R. 892, 902 (Bankr.S.D.N.Y.1994); see *In re Planned Systems, Inc.*, 78
9 B.R. 852, 859–60 (Bankr.S.D.Ohio 1987). See generally, 3 Collier on Bankruptcy ¶ 362.10, at
10 362–117 (Alan N. Resnick & Henry J. Sommers eds., 15th ed. rev.2003).

11 “Neither the statute nor the legislative history defines the term ‘for cause’ and the legislative
12 history gives only very general guidance.” *In re Sonnox Industries, Inc.*, 907 F.2d 1280, 1285 (2d
13 Cir. 1990). As such, “the ‘facts of each request will determine whether relief is appropriate under the
14 circumstances.’ ” *Id.* at 1286 (quoting H.R.Rep. No. 95–595, at 343–44 (1977), reprinted in 1978
15 U.S.C.C.A.N. 6300).

16 “Because there is no clear definition of what constitutes ‘cause,’ discretionary relief from
17 the stay must be determined on a case by case basis.” *In re MacDonald*, 755 F.2d 715, 717 (9th
18 Cir.1985); accord *Laguna Assocs. Ltd. P'ship v. Aetna Cas. & Sur. Co. (In re Laguna Assocs. Ltd.*
19 *P'ship)*, 30 F.3d 734, 737 (6th Cir.1994); *Pursifull v. Eakin*, 814 F.2d 1501, 1504 (10th Cir.1987); *cf.*
20 *In re Holtkamp*, 669 F.2d 505, 507 (7th Cir.1982) (“[T]he statute commits the decision of whether to
21 lift the stay to the discretion of the bankruptcy judge”).

22 In *In re Sonnox*, the Second Circuit recognized the following factors (the “*Sonnox* factors”)
23 as relevant to deciding whether to allow litigation involving the debtor to proceed in an alternate
24 forum:

25 (1) whether relief would result in a partial or complete resolution of the issues; (2)
26 lack of any connection with or interference with the bankruptcy case; (3) whether the
27 other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal
28 with the necessary expertise has been established to hear the cause of action; (5)
 whether the debtor’s insurer has assumed full responsibility for defending it; (6)
 whether the action primarily involves third parties; (7) whether litigation in another
 forum would prejudice the interests of other creditors; (8) whether the judgment

claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms.

Sonnax, 907 F.2d at 1286.

"Not all of these factors will be relevant in every case," but they guide the court's analysis. *In re Mazzeo*, 167 F.3d at 143.⁷

(a) Allowing a Judgment to be Entered in the Santa Clara Superior Court in *LAI v. WANG, et al.*, Santa Clara County Superior Court Case No. 17CV308093 Favorably Meet Many of the Second Circuit's "*Sonnax* Factors"

As noted above, a judgment of dismissal for CREDITORS as prevailing parties in *LAI v. WANG, et al.*, Santa Clara County Superior Court Case No. 17CV308093 is overwhelmingly a ministerial act given that the merits of the litigation were rendered initially in the Santa Clara Superior Court's May 16, 2019 Order granting CREDITORS' special motion to strike under the anti-SLAPP statute in part, affirmed on May 10, 2023, by the Sixth District Court of Appeal which then also reversed that portion of the May 9, 2019 Order denying WANG's special motion to strike as to the fraud, breach of contract, and common counts causes of action and directing a new order granting WANG's anti-SLAPP motion. (See Adversary Proceeding Complaint (Case No. 23-05101), p. 13, ¶¶47-49 and Exhibits I and J thereto [Exhibits E and F to Moore Decl].)

Thus, an entry of a judgment on the May 16, 2019 Order, the May 10, 2023 Opinion and subsequent order by the Superior Court granting WANG's special motion to strike on July 21, 2023 (see Proposed Judgment, p. 2) and the November 21, 2023 Tentative Ruling (Exhibit A), November 21, 2023 Minute Order (Exhibit B) and the December 8, 2023 Order (Exhibit C) fixing attorneys' fees and costs as of that date (November 21, 2023) would result in a complete resolution of the issues in *LAI v. WANG, et al.*, Santa Clara County Superior Court Case No. 17CV308093 under the

⁷ The two most important factors the Ninth Circuit has focused on among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court, see *In re MacDonald*, 755 F.2d at 717, as well as prejudice to the parties and whether exclusively bankruptcy issues are involved, see *Ozai v. Tabuena (In re Ozai)*, 34 B.R. 764, 766 (9th Cir. BAP1983). These are equivalent to fourth, tenth and twelfth *Sonnax* factors and the first of the three Fourth District factors (see *infra*.)

1 first *Sonnax* factor.⁸

2 There is a connection with this bankruptcy case, but no interference with this bankruptcy
3 case in the entry of a judgment in *LAI v. WANG, et al.*, Santa Clara County Superior Court Case No.
4 17CV308093 under the second *Sonnax* factor. The connection is that CREDITORS contend that the
5 Superior Court and Sixth Appellate District's rulings that LAI had no conclusive evidence that
6 WANG, MOORE and MELEN had engaged in "criminal conduct" nor that they had conceded such
7 and the rulings that LAI could not even demonstrate a probability of prevailing on the merits of his
8 causes of action for abuse of process, malicious prosecution and conspiracy to commit same against
9 CREDITORS by showing that his claims had at least "minimal merit", necessarily means that LAI
10 is collaterally estopped from claiming otherwise. This contention supports CREDITORS' claim that
11 the debt is "for willful and malicious injury by the debtor to another entity or to the property of
12 another entity" as non-dischargeable under 11 U.S.C. § 523(a)(6), though the willful and malicious
13 injury analysis is not entirely reliant on the doctrine of collateral estoppel. (Moore Decl., and
14 Adversary Proceeding Complaint (Case No. 23-05101), p. 32-36, 39-41, ¶¶109-121, 134-138 and
15 Exhibits I and J thereto [Exhibits E and F to Moore Decl.])

16 There is no interference with this bankruptcy case given that the "final determination"
17 feature of collateral estoppel is purely a matter of state law¹⁰ and in California, final determination
18 on the merits necessary for application of res judicata or collateral estoppel can be judgment,
19 motion, or order that determines substantial matter of right on issues of law or fact. *People v. Howie*,
20 41 Cal.App.4th 729, 736-737 (1995). LAI exhausted his appeals on the merits of the SLAPP suit as
21 the Sixth Appellate District already ruled on the issues. (Moore Decl., and Exhibit F thereto.)

22
23 ⁸ As explained *infra*, CREDITORS intend to pursue additional costs and attorneys' fees
24 under California statutory authority should they prevail on their Adversary Proceeding Complaint (Case
25 No. 23-05101).

25 ⁹ *Bonni v. St. Joseph Health System*, 11 Cal.5th 995, 1009 (2021). That burden has been
26 described as "a low one, requiring only a showing that a cause of action has at least 'minimal merit
27 within the meaning of the anti-SLAPP statute' " *Monster Energy Co. v. Schechter*, 7 Cal.5th 781, 793
28 (2019).

27 ¹⁰ In determining the application of collateral estoppel, federal courts must, as a matter of
28 full faith and credit, apply the state's law of collateral estoppel. *In re Bugna*, 33 F.3d 1054, 1057 (9th
Cir.1994) (citing 28 U.S.C. § 1738.)

1 Whether or not a judgment of dismissal is entered will not deprive CREDITORS of the application
2 of the doctrine of collateral estoppel on the grounds that a final judgment has yet to be entered. Thus
3 the second *Sonnax* factor is favorable to the CREDITORS.

4 So is the third *Sonnax* factor: the judgment does, in fact, involve Debtor LAI as a fiduciary.¹¹
5 LAI was WANG's family law attorney. Not only did he abandon her¹² as her lawyer in the middle
6 of a divorce proceeding, he accused her of lying to the very court he was representing her in and
7 accused her of the crimes of "extortion," "perjury" and "forgery," attacking her credibility after
8 threatening her in writing he would do so. (Moore Decl. and Adversary Proceeding Complaint (Case
9 No. 23-05101), pp. 7-9, 23-24, 26, ¶¶23, 26-29, 33, 82, 90 and Exhibit A [WANG Decl., p. 6, ¶18
10 and Exhibit H thereto] and Exhibit C, p. 7, ¶¶26, 47 thereto.)

11 The fourth *Sonnax* factor also presents favorably to CREDITORS. California courts are
12 uniquely designed to adjudicate anti-SLAPP statutes given the prevalence of the statute's use.
13 Indeed, while bankruptcy courts have applied California's anti-SLAPP statutes to pendent state
14 claims, the Ninth Circuit has held that the anti-SLAPP statute may not be applied to matters
15 involving federal questions, particularly those involving federal questions of bankruptcy law. *In re*
16 *Bah*, 321 B.R. 41, 46 (9th Cir. 2005).

17 The tenth *Sonnax* factor is also in favor of the CREDITORS. LAI's lawsuit, as misguided as
18 it was, was nothing more than a garden-variety fee dispute that he took to extreme lengths. It lasted
19 for over six years and, despite CREDITORS' attempts to reign-in LAI's abuses of process, the Santa
20 Clara County Superior Court has yet to rid this case from its docket. The Santa Clara County

21
22 ¹¹ The attorney-client relationship is a fiduciary one that imposes on the attorney duties of
23 confidentiality and loyalty to the client. *Gutierrez v. Girardi*, 194 Cal.App.4th 925, 932 (2011); *Zador*
24 *Corp. v. Kwan*, 31 Cal.App.4th 1285, 1293 (1995). The duty of loyalty requires the attorney "to
25 protect his client in every possible way, and it is a violation of that duty for him to assume a position
26 adverse or antagonistic to his client without the latter's free and intelligent consent." *Santa Clara*
County Counsel Attys. Assn. v. Woodside, 7 Cal.4th 525, 548 (1994) (superceded by statute on other
grounds, *Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations*
Bd., 35 Cal.4th 1072, 1077 (2005).) Both duties survive termination of the attorney-client relationship.
Oasis West Realty, LLC v. Goldman, 51 Cal.4th 811, 821 (2011).

27 ¹² In California, client abandonment is "serious misconduct that constitutes a breach of the
28 fiduciary duty owed by an attorney to the client and, accordingly, warrants substantial discipline." *Stanley v. State Bar*, 50 Cal.3d 555, 566 (1990).

1 Superior Court has a substantial interest to bring this case to a close and the interests of judicial
2 economy and the expeditious and economical resolution of litigation trends in favor of allowing
3 CREDITORS to put the final nail in the coffin of this case by having judgement entered now as
4 opposed to substantially later when the Chapter 11 petition is finished. “It is in the public interest,
5 including the court’s interest in the efficient and economical administration of justice and the
6 parties’ interest in the prompt and affordable resolution of unmeritorious cases, to expeditiously rid
7 the judicial system of a case in which a party is entitled to judgment as a matter of law, without
8 requiring protracted litigation. . . .” *Juge v. County of Sacramento*, 12 Cal.App.4th 59, 70 (1993).

9 Finally, the eleventh *Sonnax* factor is also in favor of the CREDITORS. As required by
10 California’s Rules of Court, MOORE kept LAI informed of the Proposed Order and the Proposed
11 Judgment he had prepared and sent for LAI to review and oppose if he should decide there were
12 grounds to do so in good faith. He never objected to the forms of these Proposed Order and the
13 Proposed Judgment. Rather, he timed his Chapter 11 petition so that the automatic stay could take
14 effect before the Santa Clara Superior Court could act on these ministerial requirements to make
15 judgment final. This is in keeping with LAI’s tactics throughout litigating his false, frivolous and
16 malicious claims against WANG, MOORE and MELEN in *LAI v. WANG, et al.*, Santa Clara County
17 Superior Court Case No. 17CV308093. (Moore Decl.) If left to his own devices, LAI will continue
18 to toy with the administration of justice in the Santa Clara County Superior Court or any other
19 tribunal he decides to represent himself in. *Id.*

20 The impact on the CREDITORS in preventing entry of judgment means that MOORE must
21 continue to represent WANG and MELEN for a much longer duration than any of these three
22 individuals ever contemplated. (Moore Decl.) The only hardship to LAI for the entry of judgment in
23 the Santa Clara County Superior Court is whether or not to perfect an appeal of the December 8,
24 2023 Order (Exhibit C) granting fees and costs, an action which itself would be frivolous since, as
25 Judge Manoukian found, LAI **presented no evidence** (whether or not admissible) that supported any
26 of his arguments in opposing the motion for fees. (Exhibit C, p. 5¹³.) In short, there is little impact

27 ¹³ “Unsupported argument of counsel is not evidence. (*Davenport v. Blue Cross of*
28 (continued...))

on LAI since he has nothing meritorious to appeal and the balance of harms are clearly against the CREDITORS for prolonging finality of the case *LAI v. WANG, et al.*, Santa Clara County Superior Court Case No. 17CV308093.

(b) Allowing a Judgment to be Entered in the Santa Clara Superior Court in *LAI v. WANG, et al.*, Santa Clara County Superior Court Case No. 17CV308093 Favorably Meet All Three Factors Set Forth by the Fourth Circuit

The Fourth Circuit applies three criteria. In making the determination of whether cause exists to grant stay relief to allow the litigation of an issue in the state court, the Court must balance potential prejudice to the bankruptcy debtor's estate against the hardships that will be incurred by the person seeking relief from the automatic stay if relief is denied. *Robbins v. Robbins*, 964 F.2d 342, 345 (4th Cir. 1992).

The following factors have been used to apply this balancing test:

(1) Whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary; (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because the matter would have to be litigated in the bankruptcy court; and (3) whether the estate can be protected properly by a requirement that the creditor seek enforcement of any judgment through the bankruptcy court.

Id.; see also *In re Lee*, 428 B.R. 667, 670 (Bankr.D.S.C. 2009) (citing cases).

(i) CREDITORS Will Face the Likely Hardship of Uncertainty Over Statutory Rights if the Finality of Judgment as Prevailing Parties Under the anti-SLAPP Statute Remains Unresolved

As prevailing parties under California's anti-SLAPP statute, CREDITORS were entitled to an award of attorneys' fees under Code of Civil Procedure section 425.16, subdivision (c). Such fee awards are mandatory. "[A]n award of fees may include not only the fees incurred with respect to the underlying claim, but also the fees incurred *in enforcing the right to mandatory fees* under Code of Civil Procedure section 425.16." *Ketchum v. Moses*, 24 Cal.4th 1122, 1141 (2001) (emphasis

¹³(...continued)
California (1997) 52 Cal.App.4th 435, 454; *Estate of Nicholas* (1986) 177 Cal.App.3d 1071, 1090.) If plaintiff wished to dispute the reasonableness of the hourly rate (which this Court believes it is not unreasonable) or that the work performed was unnecessary, it was his obligation to provide competent evidence documenting the contention. (See *Kerkeles v. City of San José* (2015) 243 Cal.App.4th 88, 105.)" *Id.*

1 added).

2 As we explained in *Serrano IV, supra*, 32 Cal.3d at page 639, 186 Cal.Rptr. 754, 652
3 P.2d 985, “follow[ing] the rule of the overwhelming majority of courts that have
4 considered the question [w]e hold ... that, absent circumstances rendering the
5 award unjust, fees recoverable ... ordinarily include compensation for all hours
6 reasonably spent, *including those necessary to establish and defend the fee claim.*”
The amount of litigation on this issue typically lies in the plaintiff's hands: having
litigated the matter tenaciously, Ketchum “ ‘cannot ... be heard to complain about the
time necessarily spent by the [defendant] in response.’ ” (*Id.* at p. 638, 186 Cal.Rptr.
754, 652 P.2d 985.)

7 *Ketchum v. Moses, supra*, 24 Cal.4th at 1141 (emphasis added).

8 “This statement [in *Ketchum*], although contained in a footnote, is not dicta.” *York v. Strong*
9 (2015) 234 Cal.App.4th 1471, 1477. See also *Wanland v. Law Offices of Mastagni, Holstedt &*
10 *Chiurazzi*, 141 Cal.App.4th at 22 (holding that defendants could seek their attorney fees incurred in
11 opposing a stay of enforcement of a judgment awarding attorney fees under § 425.16, subd. (c).)

12 Moreover, California Code of Civil Procedure section 685.040 provides prevailing parties
13 under the anti-SLAPP statute an award of “collection” fees as postjudgment costs of enforcing the
14 judgment as fees that may also be recovered. The statute provides that attorney fees incurred in
15 enforcement efforts “are not included in costs collectible under this title unless otherwise provided
16 by law.” Under its provisions, a litigant entitled to costs for successfully enforcing a judgment is
17 entitled to costs, but not attorney fees unless there is some other legal basis for such an award.
18 California courts have ruled that Code of Civil Procedure section 425.16, subdivision (c) is such a
19 statute that provides the legal basis for fees incurred to enforce a judgment for fees and costs under
20 the anti-SLAPP statute. *Ketchum, supra*, 24 Cal.4th at 1122, 1141 & fn. 6; (attorney fees incurred in
21 regard to previous award of fees under anti-SLAPP statute are recoverable under § 685.040);
22 *Wanland, supra*, 141 Cal.App.4th 15, 22–23 (expenses of enforcing anti-SLAPP attorney fees award
23 are recoverable under § 685.040); *Lucky United Properties Investment, Inc. v. Lee*, 185 Cal.App.4th
24 125, 138 (2010).

25 Finally, when postjudgment enforcement costs are allowed, they become part of the principal
26 amount of the judgment. Cal. Code Civ. Proc., § 685.070, subd. (d), § 685.090, subd. (a); *David S.*
27 *Karton, A Law Corp. v. Dougherty*, 171 Cal.App.4th 133, 147 (2009). Therefore, interest accrues
28 upon those costs at the rate of ten percent per annum. Cal. Code Civ. Proc., § 685.010, subd. (a).

CREDITORS face a quandary of sorts due to the existence of the two very different vehicles for them to pursue an award of additional attorneys' fees should they prevail on their Adversary Proceeding Complaint (Case No. 23-05101) while the status of the case in *LAI v. WANG, et al.*, Santa Clara County Superior Court Case No. 17CV308093. CREDITORS remain in limbo as to whether to rely on the current status quo (November 21, 2023 Tentative Ruling (Exhibit A), November 21, 2023 Minute Order (Exhibit B) and the December 8, 2023 Order (Exhibit C)) or a final judgment through entry of the Proposed Judgment (Exhibit D) as to what statutory rights they are to pursue in the future should judgment not be entered.

This quandary is compounded by other California law that will apply to their specific situation. The time limits imposed by rule 3.1702¹⁴ of the California Rules of Court for filing a motion for attorney fees under section 425.16, subdivision (c) do not commence to run until entry of judgment at the conclusion of the litigation. This interpretation of rule 3.1702 is consistent not only with the rule's history and underlying policy, but also with existing law and practice. *Carpenter v. Jack in the Box Corp.*, 151 Cal.App.4th 454, 468 (2007).

¹⁴ Rule 3.1702 states in relevant part:

(a) Application

Except as otherwise provided by statute, this rule applies in civil cases to claims for statutory attorney's fees and claims for attorney's fees provided for in a contract. Subdivisions (b) and (c) apply when the court determines entitlement to the fees, the amount of the fees, or both, whether the court makes that determination because the statute or contract refers to "reasonable" fees, because it requires a determination of the prevailing party, or for other reasons.

(b) Attorney's fees before trial court judgment

(1) Time for motion

A notice of motion to claim attorney's fees for services up to and including the rendition of judgment in the trial court-including attorney's fees on an appeal before the rendition of judgment in the trial court-must be served and filed within the time for filing a notice of appeal under rules 8.104 and 8.108 in an unlimited civil case or under rules 8.822 and 8.823 in a limited civil case.

1 The automatic stay of section 362(a)(1) of title 11 of the United States Code does not toll the
2 running of the period of time in which CREDITORS are required to file any pre-judgment motion
3 for additional attorney fees under rule 3.1702(b). *Lewow v. Surfside III Condominium Owners’*
4 *Assn., Inc.*, 203 Cal.App.4th 128, 132 (2012) (*Lewow*, citing March et al., *Cal. Practice Guide:*
5 *Bankruptcy* (The Rutter Group 2011) ¶ 3:175, p. 3-26 (rev. # 1, 2011).) *Lewow*, however, held:
6 ““Section 108(c)(2) would have acted to extend the time to file a [motion for attorney fees] until 30
7 days after notice of the lifting of the automatic stay, if that date were later than the end of the time
8 period otherwise provided for filing a [motion for attorney fees].” (Citations omitted.)” *Id.*, at 134.

9 By contrast, California Code of Civil Procedure section 685.040 provides, in part: “The
10 judgment creditor may claim costs authorized by Section 685.040 by noticed motion. The motion
11 shall be made before the judgment is satisfied in full, but not later than two years after the costs have
12 been incurred.” Hence, if the automatic stay is temporarily lifted to accomplish the entry of
13 judgment and then put back in place until further order of this Court, CREDITORS could have some
14 level of assurance of what statutory rights they can pursue should they prevail on their Adversary
15 Proceeding Complaint and what deadlines apply for the type of costs claimed.¹⁵

16 Should CREDITORS prevail on their Adversary Proceeding Complaint (Case No.
17 23-05101), CREDITORS have every intention on pursuing the additional fees and costs incurred in
18 litigating this matter against LAI under these authorities. Having entry of judgment accomplished
19 through a temporary lift of the stay and then put back in place would eliminate the kind of
20 uncertainty that will exist on which of these statutory rights govern (Cal. Code Civ. Proc., § 425.16,
21 subd. (c) or § 685.040).

22 **(ii) Entering Judgment in Santa Clara Superior Court Involves Only**
23 **State Law**

24 As reflected in the Santa Clara Superior Court’s November 21, 2023 Minute Order (Exhibit

25 ¹⁵ CREDITORS bring to the attention of this Court that the Eastern District of California
26 has in the past granted a lift of the automatic stay for a prevailing party to pursue a motion for attorneys’
27 fees under California’s SLAPP statute in *In re Healy*, 2013 WL 2308472, *2 (Bankr.E.D. Cal. March
28 29, 2013). There, before the creditor’s motion for fees and costs could be heard, the debtor filed his first
bankruptcy case. The creditor sought and received relief from the automatic stay to go forward with the
hearing on her motion for fees and costs.

1 B), the Santa Clara Superior Court had scheduled a “Dismissal Review on 28 February 2024 at
2 10:00 AM” to enter a judgment, but that proceeding will not occur due to the automatic stay. Thus,
3 CREDITORS seek to present the Proposed Judgment (Exhibit D) for signature by Judge and filing
4 by the clerk so that they can then prepare and file a notice of entry of judgment pursuant to Code of
5 Civil Procedure section 664.5, subdivision (a).¹⁶ (Moore Decl.)

6 The bankruptcy court’s handling of a very similar disposition in *In re Thomas*, 2018 WL
7 6990593 (Bankr.W.D. Tenn. October 18, 2018) is instructive. There, the bankruptcy court granted
8 creditors’ relief from the bankruptcy automatic stay so that they could pursue an appeal involving
9 purely State law issues that had already been pending and decided by the lower Tennessee State
10 Court. Such issues involved pure questions of Tennessee State law and not federal bankruptcy law.
11 It noted that a bankruptcy court is not the appropriate forum for reviewing (and reversing,
12 modifying, or affirming) state court decisions and, therefore it was appropriate to grant relief from
13

14 ¹⁶ California’s Code of Civil Procedure section 664.5 states:

15 (a) In any contested action or special proceeding other than a small claims action or an
16 action or proceeding in which a prevailing party is not represented by counsel, the party
17 submitting an order or judgment for entry shall prepare and serve, a copy of the notice
18 of entry of judgment to all parties who have appeared in the action or proceeding and
19 shall file with the court the original notice of entry of judgment together with the proof
20 of service. This subdivision does not apply in a proceeding for dissolution of marriage,
21 for nullity of marriage, or for legal separation.

22 (b) Promptly upon entry of judgment in a contested action or special proceeding in which
23 a prevailing party is not represented by counsel, the clerk of the court shall serve notice
24 of entry of judgment to all parties who have appeared in the action or special proceeding
25 and shall execute a certificate of service and place it in the court’s file in the cause.

26 (c) For purposes of this section, “judgment” includes any judgment, decree, or signed
27 order from which an appeal lies.

28 (d) Upon order of the court in any action or special proceeding, the clerk shall serve
notice of entry of any judgment or ruling, whether or not appealable.

(e) The Judicial Council shall provide by rule of court that, upon entry of judgment in
a contested action or special proceeding in which a state statute or regulation has been
declared unconstitutional by the court, the Attorney General is promptly notified of the
judgment and that a certificate of that service is placed in the court’s file in the cause.

(Cal. Code Civ. Proc., § 664.5.)

1 the automatic stay “for cause” to allow the parties to proceed in the State Court to finality and
2 conclude pending state law matters, which, like here, had been active in the State Court for years. *In*
3 *re Thomas*, at *3.

4 **(iii) The Second Fourth Circuit Factor Favors CREDITORS**

5 Whether modifying the stay will promote judicial economy and whether there would be
6 greater interference with the bankruptcy case if the stay were not lifted because the matter would
7 have to be litigated in the bankruptcy court, the second Fourth Circuit factor, is similar to the fourth,
8 tenth and twelfth *Sonnax* factors and for the reasons set forth above, they favor CREDITORS.

9 **(iv) The Third Fourth Circuit Factor Favors CREDITORS**

10 The third Fourth Circuit factor, whether the estate can be protected properly by a requirement
11 that the creditor seek enforcement of any judgment through the bankruptcy court, is also met. It is
12 precisely the remedy CREDITORS are pursuing in their Adversary Proceeding Complaint, a judicial
13 determination that LAI’s indebtedness to them as of November 27, 2023, in the amount of
14 \$173,903.12 plus additional costs and attorneys’ fees, in an amount to be determined, is a
15 non-dischargeable debt pursuant to 11 U.S.C. § 523(a)(6). (Moore Decl., and Adversary Proceeding
16 Complaint (Case No. 23-05101), p. 43, V. PRAYER,, ¶1.) Once the ministerial acts of entering
17 judgment in the Santa Clara Superior Court have been accomplished, the automatic stay will be in
18 effect and, as CREDITORS have expressly stated in their Prayer in the Adversary Proceeding
19 Complaint (Case No. 23-05101), they “consent to entry of a final order or judgment by the
20 Bankruptcy Court, reserving to all parties the right to appeal from such verdict because of errors in
21 the trial. . . .” (*Id.*) Nevertheless, because LAI sought filed his Chapter 11 petition before judgment
22 could be finalized in the Santa Clara Superior Court, CREDITORS respectfully request that the be
23 permitted to petition for additional fees and costs in the Santa Clara Superior Court since November
24 21, 2023, under California Code of Civil Procedure section 425.16, subdivision (c), based on the
25 authorities cited above (*Ketchum v. Moses, supra*, 24 Cal.4th at 1141).

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CERTIFICATE OF SERVICE

This is to certify that on the 11th day of December 2023, I electronically filed the foregoing NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT using the Court's CM/ECF filing system which sends notification of such filing to all parties and/or counsel of record.

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Dated: December 11, 2023

Law Offices of Frank S. Moore

/s/Frank S. Moore
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Attorney for Creditors
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